

Steps to organizing a nonprofit checklist

1. Choose a name for the organization. Check the availability of the name on the Utah Department of Commerce website.
2. Prepare and file an application for Reservation of Business Name (optional). **(\$20)**
3. Prepare and file Articles of Incorporation with the Division of Corporations. **(\$20)**
4. Prepare and file I.R.S. Form SS-4 Application for Employer Identification Number.
5. Prepare Bylaws.
6. Prepare and file I.R.S. Form 1023, Application for Recognition of Exemption.
7. Mail Bylaws, Articles of Incorporation (stamped by the Utah Division of Corporations), I.R.S. Form 8718 with the appropriate user fee, and if requesting an advance ruling, Form 872-C, to the appropriate address found on Form 8718. **(\$150** for organizations averaging less than \$10,000 per year over the first four years, or **\$500** for organizations exceeding that amount)
8. Apply for Appropriate Exemptions. Utah State Income Tax Exemption: send a copy of the federal determination letter with a written request to the Utah State Tax Commission. Prepare and file Form No. TC-160 Application for Sales Tax Exemption Number for Religious or Charitable Institutions with the Utah State Tax Commission. Investigate other nonprofit benefits that may apply to your organization.
9. Prepare and file a Charitable Organization Permit Application Report with the Division of Consumer Protection. **(\$100, annually)**
10. Prepare and file an Annual Report with the Division of Corporations. **(\$10)**
11. Prepare and file I.R.S. Form 990, if appropriate.



1. Choose a Name for the Organization

The steps of incorporating a nonprofit are fairly simple and straightforward, but the decisions you make now will set the tone for the organization for years to come, so it is wise to take time on each step. Think through decisions you are making not only for this year, but for five and ten years hence when the organization will likely be larger and will have more of a community impact. This applies not only to the selection of a name, but also to board size and structure. When choosing a name, think about the acronym the letters form as well as what the name suggests. The name and acronym will be used for marketing, in grant requests, and as company recognition.

The Utah Department of Commerce website (<http://www.commerce.utah.gov>) lists all of the names of nonprofits. You can perform a search on the Department of Commerce website to see if the name you desire is available.



2. Reserve the Business Name

Once you decide what to call your organization, you *may* choose to reserve the organization's name. To do so, register the name with the State of Utah for a \$20 for a period of 120 days. *You are not required* to reserve the name in advance of filing the Articles of Incorporation. Once the Articles of Incorporation are filed with the State, the name you have chosen will be yours.



3. Prepare and file Articles of Incorporation

In addition to the general information it provides, the Articles of Incorporation establish evidence of an agency's nonprofit nature. The Articles of Incorporation is the only document required by the State of Utah Division of Corporations for forming a nonprofit. Utah's Department of Commerce does not furnish forms for the Articles of Incorporation. However, to satisfy the State of Utah, the Articles of Incorporation must contain the following information:¹

- Corporate name
- Term of Corporation's existence (may be perpetual)
- The purpose or purposes for which the corporation is being formed, including a statement that it is organized as a nonprofit Corporation
- The address of the Corporation's Principal Office
- Whether or not the Corporation has Members
- The number of Trustees constituting the initial governing board (at least three members) and the name and street address of each of those Trustees
- The name and street address of each of the Incorporators (at least one)
- The street address of the Corporation's initial Registered Office and the name of its initial Registered Agent at such address
- The verified signature of each of the Incorporators
- A statement in the Articles of Incorporation or an attachment signed by the Registered Agent acknowledging acceptance as such

(See sample set of Articles of Incorporation on pg. 29)

¹ Utah Department of Commerce, April, 2002

When filing your articles, you must submit two signed original copies to the Utah Department of Commerce with a filing fee payable to the State of Utah. Additional information is available by phoning (801) 530-4849 or on the Division of Corporations website, www.commerce.utah.gov.



How Can We Amend the Articles of Incorporation?

Most changes in the organization can be handled through the annual report that an organization must file each year with the State of Utah. However, if the organization has a change in purpose or to the Articles of Incorporation, you must do the following:

- Indicate the name of the corporation.
- Provide the text of the amendment.
- Indicate the date of the amendment's adoption.
- If the amendment was adopted by the board of directors or incorporators without member(s) approval, provide a statement to that effect, noting member approval was not required.
- If the amendment was approved by the member(s) provide a statement that the number of votes cast for the amendment by the members of each voting group entitled to vote separately on the amendment was sufficient for approval.
- If approval was not by a member(s), the board of directors, or the incorporator(s), provide a statement that the approval was obtained must be included.

You may file one set of copies of the Articles of Amendment in person, by mail or fax. Include a \$15 filing fee. The address by mail is Box 146705, Salt Lake City, UT 84114-6705. If filing by fax, include a cover sheet with a Visa or Master Card number and the date of expiration (801) 530-6438. Or, hand deliver to 160 East 300 South, Main Floor.

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4. Prepare and file I.R.S. form SS-4

This form is simple to complete and is required. The Employee Identification Number (E.I.N.) becomes the number by which the organization is tracked federally. The E.I.N. for an organization is similar to an individual's Social Security number.

<p>?</p>	<p>What date should we use for the date of Incorporation? This question usually arises when completing the Federal Forms SS-4 and Form 1023. The I.R.S. considers the date of incorporation to be the date that the Articles of Incorporation were approved by the Division of Corporations.</p> <p>If the organization has been functioning for several years without incorporation, you can go back to the date of the initial formation meeting.</p>
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5. Prepare Bylaws

The Bylaws contain the operating rules and provide a framework for the organization's management procedures. The power to adopt, amend or repeal Bylaws is vested in the Board of Directors unless otherwise provided in the Articles of Incorporation or in the Bylaws. The Bylaws establish the normal working rules for the regulation and management of the affairs of the organization and, therefore, should be simple and flexible. Particular care should be taken in defining the voting members and all the proceedings for the election of the governing board.

This handbook is created to give you two options for creating your own Bylaws. First, you will find a list of the basic elements that must be contained in the Bylaws. You may use this list to create your own Bylaws or you can adapt the Sample Bylaws in this section (pg 33) to fit your organization. The Sample Bylaws can also be downloaded from the Utah Arts Council website, www.arts.utah.gov/csp/

At a minimum, Bylaws should contain the following information:

- **Purpose:** The name, purpose and goals of the organization (may also contain the organizational mission.)
- **Directors:** The number, qualifications, terms of office, definition of a quorum, dates of annual meeting, and procedure for filling board vacancies.
- **Required Officers:** Each board is required to have officers such as President, Vice-President, Secretary and Treasurer. The Bylaws should define basic number and roles of officers. One person may hold more than one office simultaneously, except for the offices of President/Chair and Secretary.
- **Executive Committee:** A majority of the board may designate two or more board members as an executive committee to act on behalf of the board in the interest of the organization, except to approve or recommend items requiring oversight of the full board, fill vacancies on the board, or amend Articles or Bylaws. **Other committees** and committee responsibilities may be outlined in the Bylaws as well.
- **Members:** If the organization has members, the Bylaws should outline their qualifications, rights and duties. Bylaws should also contain any pertinent information about regularly scheduled meetings and member responsibilities.

- a. **Indemnification:** Bylaws should contain provisions for indemnification by the corporation of its directors, officers and employees with respect to claims brought against them for actions taken in good faith, which the person reasonably believed to be in the best interest of the organization.
- b. **Amendments:** Provide instruction on the process of amending the Bylaws. As a fluid document, the Bylaws of a nonprofit should be amended to reflect the current needs of the organization. All amendments must be authorized by the Directors as outlined in the Bylaws. As a matter of good practice, amendments should be noted on the copy of the Bylaws contained in the minute book. Because of the various legal requirements involved, the organization's attorney should be consulted prior to making any significant amendments to either the Articles or the Bylaws.
- c. **Miscellaneous:** The Bylaws may include information about other records kept by the organization including: minutes, fiscal year, a Conflict of Interest Statement, contracts with the organization, basic financial requirements, and any other issues that may be important to the organization.



How Can We Amend the Bylaws?

If there is a change in purpose or activities, you must file an amendment with the I.R.S. Submit a copy of the amended Bylaws along with signatures of at least two members of the board to the I.R.S. Cincinnati office at the following address:

I.R.S.
TE-GE Room 4010
P.O. Box 2508
Cincinnati, OH 45201

What about our Board?



How should we structure the Board?

The size of the board should reflect the nature of the organization. Boards may be structured in many different ways and comprised of many different kinds of individuals. Governing, advisory and working boards are three typical types of board structures. Working boards usually run new organizations. This means that each board member plays a distinct and important role in the day-to-day operations of the organization. On a working board, the board members not only create the policies, vision and goals for the organization, they also carry out most of the work. Choosing the Board of Directors is among the most important decisions you can make. When looking for directors, look for a variety of people, including members who are willing and able to work, those who are power brokers and connected in the community, visionary leaders who are passionate about the cause, and either affluent members or people who have a connection to financial resources.

How big should the board be?

Typically, a manageable size board for a new organization is somewhere between seven and fifteen members. Too few members can place a tremendous burden on a few people and too many members can be unwieldy to manage. However, each organization must decide the best number based on the roles of the board members, the tasks to be accomplished, and the mission of the organization. Board service can be made more effective and efficient with the use of committees. Committees should support the board activities and can be made up of non-board members. By dividing board activities into committees, you can involve more people in the organization (even find potential board members) and shorten board meetings by taking care of specific details in committee meetings.

How long should a board member serve?

Although there are different thoughts about length of service, a two or three year term is sufficient. That length of time allows board members to learn the workings of the organization without burning out. Additionally, you may want to provide opportunities for board renewal. Remember, however, that Bylaws not only provide guidance to the board, they also provide protection if a problem occurs. If a problem arises with a board member, the best, and sometimes the only *kind* way to remove that board member is through board term limits. By enforcing term limits, the board remains fresh, and over the life of the organization, more people can be involved in the organization.

What constitutes a quorum?

The Bylaws should define the number required to make a quorum. Most often, it is either a majority or two-thirds of the board.

Why are we required to have at least three board members?

According to the Utah Code, nonprofit organizations are required to have a minimum of three board members. The three member minimum requirement helps the start-up organization to expand beyond the incorporator and better protects the public interest in the nonprofit. Remember that 501(c)(3) organizations exist to benefit the general public.

Can a board member receive payment for service on the board? Or, can a board member receive payment for services to the organization which are separate from their role on the board?

One of the key restrictions that the I.R.S. places on a nonprofit organization is that the board members be volunteer representatives of the community. A board member may not be paid for his or her service on the board. He/she may, however, be compensated for gas, mileage, and expenses associated with their service on the board. Although it is best to separate the activities of the board and the activities of staff and/or contract people, there are occasions when a board member may provide services that are separate from their board service. For example, a dance company may have a member of the board who is also an instructor for the company. If this occurs, be careful to keep clear records of the board member's service and his or her paid work.

How often should the board meet?

As often as needed, but not so many times that board members do not feel their time is well spent. A lot will depend on which type of board you have. A governing board may only need to meet on a quarterly basis to approve the budget or set new policy. On the other hand, a working board may need to meet monthly to ensure the health of the organization with regard to ongoing decisions that need to have prompt attention. Try to limit the number of meetings or limit the length of meetings by using time-savers such as separate ad hoc committees or consent agendas.

One way to maintain efficient board meetings is to use committees. Assign board members to committees as directed by your mission and strategic plan. At the board meeting, each committee should make a report and ask for approval on specific items decided by their committee at a separate meeting. Using this format can empower board members and encourage efficiency at full-board meetings.

NOTE: To answer more of your questions about boards, the Community/State Partnership Program has compiled a handbook for board development entitled *The Art of Board Development* as a companion nonprofit handbook. This handbook and *The Art of Volunteer Development* are available through the CSP office and will also be published on our website.



6. Prepare and file I.R.S. Form 1023, Application for Recognition of Exemption

For many people, completing Form 1023 is the most intimidating part of the process of becoming a tax-exempt organization. However, the Form is usually less difficult than it appears. The purpose of Form 1023 is to prove to the I.R.S. that the mission of your organization is nonprofit in nature. In this document, an I.R.S. agent will scrutinize the purpose statement in Part II, evaluate your sources of income and fund raising practices, and try to determine if the proposed organization has a nonprofit mission.

The form is available either through the I.R.S. website, <http://www.irs.gov> or by calling the toll-free number for Exempt Organizations, 1-877-829-5500. In addition to Form 1023, the I.R.S. provides Publication 557 with more detailed information about Tax-Exempt Status.

The instructions that accompany Form 1023 are detailed and much of the Form is self-explanatory. There are a few areas that tend to be harder to complete than others. The areas are as follows:

- Part II, Question 1. The general rule of thumb for this section is to give the I.R.S. just enough information to understand your organization. Provide the what, when, where and how for the past, present and planned future of the organization. It is acceptable to add additional pages as necessary. This may be the most important section for determining your exempt status, so write it carefully. Form 1023 is considered a public document. You may request a copy of another organization's 1023 application by fax (513) 263-3756. The cost is one dollar for the first page, and fifteen cents for additional pages.
- Part II, Questions 2, 3. It is important to the I.R.S. to know where your money comes from. Answer the questions as exactly as possible.
- Part II, Questions 13, 14. Questions related to lobbying are in this form because it is important to the I.R.S. to confirm that the organization is not going to spend a substantial percentage of its resources on lobbying. For more information see Frequently Asked Questions, page three.

- Part III, Questions 7-9. Public charity or private foundation? The difference is significant. All 501(c)(3) organizations are classified either as a public charity or a private foundation. The difference between the two can have an impact on the donors and the organization. The amount of money a donor can give to a private foundation is a smaller percentage of his or her total net worth. Typically, a private foundation is established for the purpose of giving money under the auspices of a family name (for example: James L. Knight Family Foundation).

The determination between private foundation and public charity depends on where your money comes from. If the bulk of your money comes from a variety of individual donors, foundations and government grants then the organization is a public charity. If most of your money comes from one source then the organization would be considered a private foundation. Please note that the IRS assumes the organization is a private foundation unless proven otherwise. It is in the best interest of most nonprofits to prove that the organization is a public charity. Both private foundations and public charities are required to file a 990 tax return.

- Part III, Question 10 and Form 872-C. What is an Advance Ruling? If the organization applying for exempt status has not been in existence prior to the application to the I.R.S., the I.R.S. must make an advance ruling regarding the status. The advance ruling is based on the information, you provide in Form 1023. Based on that information, if the I.R.S. thinks that you are a nonprofit, they will grant you exempt status for a probationary period. At the end of the probationary period, the organization will be requested to send documentation, including budgetary information to prove the organization is worthy of its exempt status. If you are requesting an advance ruling, you must complete and attach two copies of Form 872-C, Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code to Form 1023.
- Part IV. Provide the most accurate budgetary history or projection you can. It is acceptable to indicate no/zero income where appropriate.



7. Prepare and File I.R.S. Form 8718

Mail Bylaws, Articles of Incorporation (a copy of the articles stamped by the Utah Division of Corporations), I.R.S. Form 8718 with the appropriate user fee (**\$150** for organizations averaging less than \$10,000 per year over the first four years, or **\$500** for organizations exceeding that amount.) and if requesting an advance ruling, Form 872-C to the appropriate address found on form 8718.



Form 8718: What happens if we estimate incorrectly and make more than an estimated \$10,000/year in the first four years?

The I.R.S. will not bill you retroactively. You are expected to make a best-faith estimate in your initial application.

8. Apply for appropriate exemptions

Exemption from Sales Tax

In order to obtain exemption from sales tax in Utah, you must first be recognized as an exempt organization by the I.R.S. [i.e., a 501(c)(3) organization]. Once you have received the determination letter from the I.R.S., mail it along with Form TC-160 to the Utah State Tax Commission.



Is Utah tax exempt status retroactive?

Although an organization may not receive tax and income exemption until it receives the determination letter from the I.R.S., the exemption may be retroactive:

- Income tax exemption is generally retroactive to the day of inception.
- Sales tax exemption is generally retroactive to the day of inception or three years, whichever is less.

Exemption from Income Tax

In order to obtain exemption from income tax, send a copy of your 501(c)(3)-determination letter and a simple written request to the Utah State Tax Commission.

Some activities and sales of a nonprofit organization do not merit nonprofit exemption.

598 Tax on Unrelated Business Income of Exempt Organizations

The I.R.S. grants exemption from the payment of income tax on income directly related to the purpose of the organization. All income is subject to taxation and the I.R.S. has the right to grant or deny an exemption depending on the nature of the requested exemption.

Because unrelated business income is often made through sale of incidental items or through activities not related to the organization, the income may be taxed. For example, churches which host bazaars where they sell used clothing, cakes or other goods, may be subject to I.R.S. taxes because the items being sold do not substantially relate to the activity and focus of the church.

To be considered unrelated business income, the product or service in question must satisfy all three of the following tests:

- The income is derived from a trade or business;
- The trade or business is regularly carried on; and
- The trade or business is not substantially related to the organization's exempt purpose.

There are some exemptions to Unrelated Business Income Tax including passive income such as interest payments, royalties, annuities and certain rents. Organizations run by volunteers for the convenience of their members may also be exempt. Exemptions, as with taxes, are the domain of the I.R.S.

Qualifications for Nonprofit Mail Rate

Most 501(c)(3) organizations qualify for a Nonprofit Standard Mail Rates Permit from the U.S. Post Office. This permit entitles nonprofits to lower rates on mailings. To obtain a permit, you must complete a simple application, PS Form 3624. The form is available on the U.S. Post Office web page, www.usps.gov or may be obtained from your local post office. In addition to the form, you will need the following documents:

- A copy of the tax-exempt determination letter from the I.R.S.
- Documents describing the organization's primary purpose, such as the Articles of Incorporation and/or Bylaws.
- Supporting materials showing how the organizations actually operated during the previous 6-12 months and how it will operate in the future. Bulletins, financial statements, membership forms, publications produced by the organization, minutes of meetings or a list of its activities may be used.

Keep in mind that the completed Form 3624 must be submitted to the post office where bulk mailings will be deposited. If the application is approved, the authorization will apply only at that post office.

Other exemptions

There are other exemptions that nonprofit organizations may qualify for. You may want to investigate other options, such as property tax exemption, that are applicable to your organization.

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9. Prepare and File a Charitable Solicitation Permit

According to Utah Code Annotated, §§13-22-1 to 21, any organization seeking donations must obtain a Charitable Solicitation Permit from the Utah Division of Consumer Protection. The Utah Charitable Solicitations Act was enacted to protect both consumers and legitimate charities. This law requires charities to register annually with the Department of Commerce, Division of Consumer Protection. Unless you are granted exemption under the law, you must file an application each year and pay an annual fee of \$100 per year. You can contact the Division of Consumer protection at (801) 530-6601 or www.commerce.utah.gov

?	<p>Can we accept donations prior to receiving the exempt designation from the I.R.S. and the state income exemption?</p> <p>Because the tax exempt status is retroactive to the date of incorporation (up to 15 months), donations given prior to receipt of the determination letter may be exempt. Because you should take special care of your donors, be aware of the window of time in which the status is retroactive. Be aware that many donors have regulations that require that you have the exempt status prior to applying.</p>
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?	<p>What kind of information do we need to provide to our donors to comply with I.R.S. standards?</p> <p>A charitable organization must give a donor a disclosure statement for a quid pro quo contribution over \$75. A quid pro quo contribution is a payment a donor makes to a charity partly as a contribution and partly for goods or services (for example, a donor gives \$100 and receives two complimentary tickets in return, valued at \$40). The receipt must state the value of the gift. You should provide written receipts for all donations to the organization. If no goods or services are received for the services, the receipt should indicate, "no goods or services were given in return for this donation."</p>
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10. Prepare and file Appropriate Reports

Utah Annual Reporting Requirements

Annual reports must be filed during the month of the anniversary date of incorporation, on a form provided by the Utah Division of Corporations.

I.R.S. Form 990

An organization only needs to file a 990 if its income is \$25,000 or greater or if the I.R.S. sends the organization a 990 in the mail.

NOTE: The 990 is a key source of information about nonprofits. It is a document of public record available through libraries and found on the internet. One good site is the Foundation Center under the tab *Finding Funders*, www.fdncenter.org. The 990 summarizes an organization's finances, including listing salaries of the top paid officials, names of the board of directors, and financial gifts from private foundations. Remember that private foundations are also nonprofit organizations. It is possible to learn a fair amount about the giving practices of a nonprofit organization by looking at the Form 990.



What do we do if the organization has been inactive for some time?

Utah: If the board has failed to file the Annual Report or for some other reason has lost its recognition by the State of Utah, then the organization must file an Application for Reinstatement. The application is available from the State of Utah Division of Corporations. The cost to reinstate is \$20.

I.R.S.: An organization can be dormant for a period of time but remain in good standing. An organization falls out of good standing with the I.R.S. by not supplying requested information such as the 990, proof of purpose, or other documents as determined by the I.R.S. To learn if the organization is in good standing, call the IRS toll-free line, 1-877-829-5500.

